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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DARYL C., JR., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.B., et al.,

Defendants and Appellants.

D049957

(Super. Ct. No. NJ13518)

APPEAL from orders of the Superior Court of San Diego County, Harry M. Elias,
Judge. Affirmed.

L.B. and Daryl C., Sr., appeal an order declaring their son, Daryl C., Jr., a
dependent child of the juvenile court under Welfare and Institutions Code section 300,
subdivision (b).¹ They contend there was not substantial evidence to support a finding of

¹ All statutory references are to the Welfare and Institutions Code.

court jurisdiction or to support the order removing Daryl, Jr., from their custody. Daryl, Sr., also asserts there was insufficient evidence to support the order requiring him to attend a domestic violence treatment program. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On October 11, 2006, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of one-year-old Daryl, Jr., based on domestic violence between Daryl, Sr., and L.B. On October 5 the parents left Daryl, Jr., alone while L.B. and another woman engaged in a violent altercation, and L.B. drove her car to chase the other woman's car, in which Daryl, Sr., was riding.

L.B. told the social worker she discovered Daryl, Sr., with a female friend, Monique. She and Monique began fighting, and Daryl, Sr., tried to intervene. He then got into Monique's car with Monique. L.B. followed them in her car, and threw a rock at Monique's car. Daryl, Jr., was left without adult supervision. When police arrived, they arrested L.B. for child endangerment and placed Daryl, Jr. in protective custody.

L.B. said she had been in a relationship with Daryl, Sr., for three years. She said they had had earlier incidents of domestic violence, including one which resulted in a restraining order and Daryl, Sr., being arrested and required to participate in anger management and counseling. L.B. said she had been confined to Juvenile Hall as a teenager and diagnosed for depression at age 16. She had her first child at age 16 and her second child two years later. These two children live with their paternal grandparents. She admitted to smoking marijuana recently.

Daryl, Sr., said he lived apart from L.B. and did not tell her where he lived so he could get away from her " 'when she gets like that.' " He admitted a past domestic violence incident with L.B. that led to his arrest and a restraining order. He told police that on the day of the incident that resulted in Daryl, Jr., being placed in protective custody he had attempted to break up a fight between L.B. and Monique, and L.B. ripped his pockets and scratched him. He said holes in the walls of L.B.'s apartment were from past altercations. The court ordered Daryl, Jr., detained.

At the jurisdictional and dispositional hearing on November 28, 2006, the social worker testified Daryl, Jr., was then living with the paternal grandparents. L.B. wanted him to live with the maternal grandmother, but the social worker did not believe the maternal grandmother had the ability to protect him. The social worker said she had provided referrals to L.B., but L.B. had refused them. L.B. was participating in an anger management program. Daryl, Sr., began therapy, but, at the time of the hearing, he was anticipating being sentenced in a criminal case, so he had not started other services. The social worker recommended the parents have separate, supervised visits with Daryl, Jr., and participate in drug abuse treatment and domestic violence treatment programs.

At the close of testimony and argument, the court declared Daryl, Jr., a dependent child, removed custody and ordered him placed in relative care. It ordered liberal supervised visits and directed the parents to comply with their case plans.

DISCUSSION

I

Daryl, Sr., contends there was not substantial evidence to support the jurisdictional finding under section 300, subdivision (b). He argues the incident when L.B. impulsively left Daryl, Jr., alone does not support a conclusion the child was at substantial risk of serious physical harm or illness. L.B. joins this argument.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114, quoting *In re Biggs* (1971) 17 Cal.App.3d 337, 340.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The parents have not shown the evidence was insufficient to support the jurisdictional finding. A juvenile court is not required to wait until a child is actually hurt before assuming jurisdiction. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds in *Renee J. v. Superior Court* ((2001) 26 Cal.4th 735, 748, fn. 6.) The petition alleged that on October 5 the parents left Daryl, Jr., alone without adult supervision and exposed him to a violent confrontation between them, subjecting him to substantial risk of serious physical harm. The petition also alleged there was a history of family violence. The parents admitted there had been an altercation between

L.B. and Monique; Daryl, Sr., had attempted to break up the fight; there was a car chase; and L.B. threw a rock at Monique's car. Maintenance workers reported that on the day of the altercation they went to L.B.'s apartment because they were concerned Daryl, Jr., might be alone in the apartment and that this was a common occurrence. These circumstances together with the parents' history of domestic violence and criminal activity support the juvenile court's finding Daryl, Jr., was at substantial risk of serious harm.²

II

L.B. and Daryl, Sr., assert the court erred in removing Daryl, Jr., from their custody.

The social worker's reports and testimony showed the parents had an angry, violent relationship and during the altercation with Monique they left Daryl, Jr., alone and unattended. Also, both parents had a history of substance abuse, and L.B. refused the social worker's referrals and refused to go to therapy.

The holding of *In re Basilio T.* (1992) 4 Cal.App.4th 155 does not require a different finding. There, evidence of violence was contradicted and hearsay, and a child recanted his earlier reports. The court upheld the jurisdictional finding, but reversed the

² Daryl, Sr., was arrested as a juvenile in 1997 for assault with a deadly weapon and in 1999 for burglary. In 2002 he was convicted of driving under the influence of drugs or alcohol and of a theft-related felony. In 2004 he was arrested for inflicting corporal injury on a spouse or cohabitant and false imprisonment with violence, and in 2005 he was arrested for possession of a controlled substance. At the time of the hearing he was awaiting sentencing for a 2005 charge of vehicular manslaughter. L.B. was arrested in 1998 for vehicle theft and in 2006 for petty theft.

removal order, finding a lack of substantial evidence of violence to support removal of the children. (*Id.* at pp. 170-171.) Here, the evidence of violence was not contradicted. There was a history of domestic violence and of substance abuse. Daryl, Jr., was only 14 months old and required protection and supervision. Daryl, Sr., was incarcerated at the time of the disposition hearing and not able to care for him. The disposition order was supported by substantial evidence.

III

Daryl, Sr., claims he should not be required to participate in domestic violence treatment.

The requirement of domestic violence treatment was reasonable to address the parents' problems with anger management and domestic violence. The social worker opined Daryl, Sr., needed a domestic violence treatment program because he had a prior conviction for domestic violence and had participated in therapy and a 12-week anger management course, but problems with violence continued. The requirement he participate in a domestic violence treatment program is well supported.

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.